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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/776,040	02/01/2001	Joerg Ehrhardt	7057 US	2464
7590	09/13/2004		EXAMINER	
			KE, PENG	
			ART UNIT	PAPER NUMBER
			2174	
DATE MAILED: 09/13/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/776,040	EHRHARDT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Peng Ke	2174	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 04 June 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-13 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |  |
|--|--|
| <input type="checkbox"/> Notice of References Cited (PTO-892)  | <input type="checkbox"/> Interview Summary (PTO-413)                     |
| <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                      | Paper No(s)/Mail Date: _____ .   |
| <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date: _____ . | <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | <input type="checkbox"/> Other: _____ .                                  |

## **DETAILED ACTION**

1. This action is responsive to communications: Amendment, filed on 6/04/2004.

This action is final.

2. Claims 1-13 are pending in this application. Claims 1 and 8 are independent claims. In the Amendment, filed on 6/04/2004, claims 1 and 8 were amended.

3. Since applicant fails to traverse the examiner's assertion of official notice, the examiner is taking the office notice to be admitted prior art.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3, 6-10, and 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Swift (WO 98/57268).

As per claim 1, Swift teaches a method of setting up a communication procedure between instances, with one instance being a protocol tester, comprising the steps of:

selecting the instances that take part in the communication procedure (various network components can send messages to management) (page 1, paragraph 3, lines 1-9);  
selecting a protocol layer to be emulated on the basis of the communication procedure (Internal protocol or Transport Control Protocol or other protocol capable of transferring messages is used) (page 7, paragraph 1, line 1-paragraph 2, line 9);

selecting abstract communication interfaces of the emulated protocol layer for the communication procedure (software applications that build interfaces) (page 7, paragraph 2, lines 1-9);

selecting communication data contained in description files to be exchanged at the abstract communication interfaces (page 9, paragraph 2); and

automatically setting up through the protocol tester the communication procedure on the basis of the selections trade in the above selecting steps, with parameters for the abstract communication interfaces and the communication data selecting steps being made graphically (message created, interfaces produced with PowerBuilder/PowerSockets, specific description file in Fig. 3, 222 (message sequence definition)) (page 7, paragraph 3, lines 1-5. Fig. 4A. items 406-422).

As per claim 2, Swift teaches the method wherein the instances selecting step comprises the step of selecting the instances graphically and/or the emulated protocol layer selecting step comprises the step of selecting the emulated protocol layer graphically, and the parameters selectable in these steps being assigned description files (message sequence, 406) that are used in the setting up step

(Device name selection, message selection) (Fig. 4A-4B).

As per claim 3, Swift teaches the method wherein the abstract communication interfaces comprise Service Access Points (specific, device) (Fig.4b, items 413, 438).

As per claim 6, Swift teaches the method wherein the communication data-selecting step comprises the steps of graphically selecting a data format; and graphically setting up a communication sequence between the selected instances (graphical interface to define and specify message) (page 3, paragraph 2, line 1-paragraph 3, line 9)

As per claim 7, Swift teaches the method wherein the graphically setting up step comprises the step of entering source code (customizing software code for testing purposes) (page 2, paragraph 2, lines 1-7).

As per claims 8-10 they are the means claims of claims 1-3.

As per claim 13, teaches the protocol tester wherein all parameters selected by all the selecting means are assigned description files that are used by the setting up means (message sequence identifier) (Fig. 4a, Fig. 3, page 9, paragraph 3, lines 1-7).

***Claim Rejections - 35 USC § 103***

Claims 4, 5, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swift et al (hereinafter Swift), WO 98/57268.

As per claims 4, 5, and 11, in addition to what has been discussed for claims 1-3 and 8 10, Swift does not teach the method wherein the communication data comprise at least one type selected from the group consisting of Protocol Data Units and Abstract Service Primitives. However, Official Notice is taken that specifying a data type is necessary and that PDUs (pocket-sized data) and Abstract Service Primitives are well known in the art as data communication types therefore it would have been obvious to one of ordinary skill in the art at

the time of the invention to modify Swift's invention to include the option of selecting a type from a group including PDUs and ASPs in order to data type selection options for the user.

As per claim 12, Swift teaches the protocol tester comprising means for entering source code (customizing software code for testing purposes) (page 2, paragraph 2, lines 1-7).

***Response to Argument***

Applicant's arguments filed on 8/27/04 have been fully considered but they are not persuasive.

Applicant's arguments include following:

A) Applicant's argues that Swift fails to teach bi-directional activity.

A) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., bi-directional acitivity) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

B) Applicant's argues that Swift fails to teach SAP and communication data selecting steps graphically.

B) Swift allows user to define specific device, and it is inherent for this device to have a service access point. Therefore, Swift teaches allowing user specific particular access point using graphical user interface.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peng Ke whose telephone number is (703) 305-7615. The examiner can normally be reached on M-Th and Alternate Fridays 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kristine L Kincaid can be reached on (703) 308-0640. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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